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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/024,583	12/21/2001	Subraman Rao Cherukuri	24734	2492
20529	7590	07/13/2004	EXAMINER	
NATH & ASSOCIATES 1030 15th STREET 6TH FLOOR WASHINGTON, DC 20005			COE, SUSAN D	
			ART UNIT	PAPER NUMBER
			1654	

DATE MAILED: 07/13/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/024,583	CHERUKURI ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Susan D. Coe	1654	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 08 April 2004 and 30 April 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1,3-16,18-35,38 and 39 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,3-16,18-35,38 and 39 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some    \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)             | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

### **DETAILED ACTION**

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on April 8, 2004 has been entered.
2. Claims 2, 17, 36, and 37 have been cancelled.
3. Claims 1, 3-16, 18-35, 38, and 39 are currently pending and are examined on the merits.
4. In Paper No. 5, dated January 29, 2003, applicant elected with traverse hydrogenated starch hydrolysate and lactitol for species A, partially hydrogenated soybean oil for species B, lecithin for species C, dietary fibers for species D, carrageenan for species E, hydroxypropylmethyl cellulose for species F, and psyllium for species G.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 9, 19-21, 24, 26, 30, 32 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 9 recites the limitation "said viscosity improvement agent." There is insufficient antecedent basis for this limitation in the claim.

Claim 19 recites the limitations "said emulsifier" and "said fat." There is insufficient antecedent basis for these limitation in the claim.

Claim 20 recites the limitation "said fat component." There is insufficient antecedent basis for this limitation in the claim.

Claim 21 recites the limitation "said emulsifier." There is insufficient antecedent basis for this limitation in the claim.

Claim 24 recites the limitation "said viscosity improvement agent." There is insufficient antecedent basis for this limitation in the claim.

Claim 26 recites the limitation "said bioadhesive agent." There is insufficient antecedent basis for this limitation in the claim.

Claims 28-30 recites the limitation "the protein-based." There is insufficient antecedent basis for this limitation in the claim.

Claim 32 recites the limitation "said one polyol." There is insufficient antecedent basis for this limitation in the claim.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1, 3-7, 10-15, 38, and 39 are rejected under 35 U.S.C. 102(b) as being anticipated by US Pat. No. 5,342,631.

The reference teaches numerous sugar free compositions. For example, the compositions contain a gum base that contains hydrogenated vegetable oils and lecithin. The gum base in example 5 in column 14 uses 16.5% vegetable oil and 2.7% lecithin. Example 15 uses 23% of the gum base from example 5 to make a gum composition. Thus, the composition in example 15 has 4.37% lecithin and vegetable oil plus an additional 0.15% lecithin. The composition in example 14 also contains 25.55% sorbitol, 6% mannitol, and 4% hydrogenated starch hydrolysate (HSH). The composition also contains 35% guar gum hydrolysate which is a bioadhesive and a dietary fiber. Furthermore, the composition contains peppermint flavoring.

The reference also teaches using numerous fats and oil in place of hydrogenated vegetable oil (see column 10, lines 56-59), colorants and flavors (see column 11, lines 50-52 and paragraph spanning columns 13 and 14), and that HSH is also a binders (see column 12, lines 30-33).

7. Claims 1, 3-5, 7-16, 18-20, 22-27, 30-35, 38, and 39 are rejected under 35 U.S.C. 102(b) as being anticipated by EP 0 273 001.

EP '001 teaches sugarfree compositions that contain 35% to 89% HSH, 1% to 10% cellulose, 7% to 12% water, and 2 to 10% fat (see last paragraph of page 2). The cellulose is preferably hydroxypropylmethylcellulose (see page 5, line 23). The fat can be partially hydrogenated soybean oil (see page 6, lines 2 and 3). The composition further contains 0.1 to 7.5% gelatin (see page 4, lines 28-32). The composition also contains up to 3% of a thickening agent which can be carrageenan, psyllium, and xanthan gum (see page 4, lines 37, 38, 44, 49, 50, and 51). Xanthan gum is also an emulsifier. Furthermore, the composition contains up to 45%

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lactitol (see page 5, lines 40-42). Finally the composition can contain flavorings and dyes (see page 6, lines 7-23).

8. Claims 1, 3, 4, 6-16, 18, 19, 21-35, 38, and 39 are rejected under 35 U.S.C. 102(b) as being anticipated by US Pat. No. 4,778,676.

US '676 teaches a confectionary composition that is a carrier for dietary fiber. The fiber can be psyllium or carageenan in amounts of 1% to 75% (see column 5, line 11, 27, and 28). The confectionary carrier 6 to 70% of a sweetener that can be HSH, sorbitol, xylitol, and mannitol (see column 7, lines 3-5, 10, and 12). The carrier also contains 0.1 to 5% gelatin (see column 7, lines 19 and 20). The composition also contains flavorings (see column 7, lines 53-64). 1 to 10% of a combination of lecithin and glyceride is used as a coating. The composition contain water and gums. Gums are bioadhesives.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 1, 3-7, 10-15, 28-30, 38, and 39 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Pat. No. 5,342,631.

The anticipatory teaching of the reference are discussed above. However, the reference does not specifically teach adding the ingredients in the amounts claimed by applicant or using all of the flavorings claimed by applicant. The amount of a specific ingredient or the use of a

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specific flavor in a composition is clearly a result effective parameter that a person of ordinary skill in the art would routinely optimize. Optimization of parameters is a routine practice that would be obvious for a person of ordinary skill in the art to employ. It would have been customary for an artisan of ordinary skill to determine the optimal amount of each ingredient to add or flavor to use in order to best achieve the desired results. Thus, absent some demonstration of unexpected results from the claimed parameters, this optimization of ingredient amount and flavoring would have been obvious at the time of applicant's invention.

10. Claims 1, 3-5, 7-16, 18-20, 22-35, 38, and 39 rejected under 35 U.S.C. 103(a) as being unpatentable over EP 0 273 001.

The anticipatory teaching of the reference are discussed above. However, the reference does not specifically teach adding the ingredients in the amounts claimed by applicant or using all of the flavorings claimed by applicant. The amount of a specific ingredient or the use of a specific flavor in a composition is clearly a result effective parameter that a person of ordinary skill in the art would routinely optimize. Optimization of parameters is a routine practice that would be obvious for a person of ordinary skill in the art to employ. It would have been customary for an artisan of ordinary skill to determine the optimal amount of each ingredient to add or flavor to use in order to best achieve the desired results. Thus, absent some demonstration of unexpected results from the claimed parameters, this optimization of ingredient amount and flavoring would have been obvious at the time of applicant's invention.

11. Claims 1, 3, 4, 6-16, 18, 19, 21-35, 38, and 39 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Pat. No. 4,778,676.

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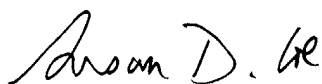
The anticipatory teaching of the reference are discussed above. However, the reference does not specifically teach adding the ingredients in the amounts claimed by applicant or using all of the flavorings claimed by applicant. The amount of a specific ingredient or the use of a specific flavor in a composition is clearly a result effective parameter that a person of ordinary skill in the art would routinely optimize. Optimization of parameters is a routine practice that would be obvious for a person of ordinary skill in the art to employ. It would have been customary for an artisan of ordinary skill to determine the optimal amount of each ingredient to add or flavor to use in order to best achieve the desired results. Thus, absent some demonstration of unexpected results from the claimed parameters, this optimization of ingredient amount and flavoring would have been obvious at the time of applicant's invention.

12. No claims are allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Susan Coe whose telephone number is (571) 272-0963. The examiner can normally be reached on Monday to Thursday from 8:00 to 5:30 and on alternating Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Bruce Campell, can be reached on (571) 272-0974. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0196.



Susan D. Coe, Examiner  
July 7, 2004